

TH 03-0120-CR 1 T/F US v Getchell
Magistrate Kennard P. Foster

Signed on 9/29/05

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	Cause No. TH 03-120-CR-01 (T/F)
)	
ROBERT GETCHELL,)	
)	
Defendant.)	

MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION

This matter is before the undersigned U. S. Magistrate Judge pursuant to the Order entered by the Honorable John Daniel Tinder, Judge, on September 27, 2005, designating this Magistrate Judge to conduct hearings on the Petition for Summons or Warrant for Offender Under Supervision, filed with the Court on September 16, 2005, and to submit to Judge Tinder proposed Findings of Facts and Recommendation for disposition under Title 18 U.S.C. §§3401(i) and 3583(e). All proceedings in this matter were held on September 28, 2005 pursuant to Title 18 U.S.C. §3583, and Rule 32.1(a)(1) of the *Federal Rules of Criminal Procedure*. The government appeared by Brad Blackington, Assistant United States Attorney. The defendant appeared in person with his appointed counsel, William Marsh, the Indiana Federal Community Defender. Robert Akers, U. S. Parole and Probation officer, appeared and participated in the proceedings.

The Court conducted the following procedures in accordance with Rule 32.1(a)(1) *Federal Rules of Criminal Procedure* and Title 18 U.S.C. §3583:

1. That William Marsh, the Indiana Federal Community Defender, was present and appointed to represent Mr. Getchell in regard to the Petition for Revocation of Supervised Release.

2. A copy of the Petition for Revocation of Supervised Release was provided to Mr. Getchell and his counsel who informed the Court that they had read and understood the specifications of each alleged violation and waived further reading thereof.

3. Mr. Getchell was advised of his right to a preliminary hearing and its purpose in regard to the alleged specified violations of his supervised release contained in the pending Petition.

4. That Mr. Getchell would have a right to question witnesses against him at the preliminary hearing unless the Court, for good cause shown, found that justice did not require the appearance of a witness or witnesses.

5. That Mr. Getchell had the opportunity to appear at the preliminary hearing and present evidence on his own behalf.

6. That if the preliminary hearing resulted in a finding of probable cause that Mr. Getchell had violated the alleged condition or conditions of supervised release set forth in the Petition, he would be held for a revocation hearing before the undersigned Magistrate Judge, in accordance with Judge Tinder's designation on September 16, 2005.

7. Mr. Marsh stated that Robert Getchell would stipulate there is a basis in fact to hold him on the specifications of violation of supervised release set forth in the Petition. Mr. Getchell waived the preliminary examination, in writing, which was accepted by the Court.

8. Mr. Getchell, by counsel, stipulated that he committed the specified violation numbered 2 set forth in the Petition for Warrant or Summons for an Offender Under Supervision, filed with the Court on September 16, 2005, as follows:

<u>Violation Number</u>	<u>Nature of Noncompliance</u>
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2

“You shall report to the Probation Office as directed by the Court or probation officer, and shall submit a truthful and complete report within the first five days of each month.”

On August 23, 2005, this USPO left instructions at the defendant's residence directing Getchell to report to the Evansville USPO on August 31, 2005. Mr. Getchell did not report as instructed.

Mr. Getchell did not submit a monthly report for either August or September, 2005.

9. The Court then placed Mr. Getchell under oath and inquired directly of him whether he admitted violation number 2 of the specification of his supervised release set forth above. Mr. Getchell stated that he admitted the above violation of his supervised release as set forth. The government moved to dismiss specifications 1, 3, 4, 5, 6 and 7 contained in the Petition to revoke Supervised Release, filed September 16, 2005, and the Court dismissed the same.

Counsel for the parties further stipulated to the following:

- 1) Mr. Getchell has a relevant criminal history category of II, U.S.S.G. §7B1.4(a).
- 2) The most serious grade of violation committed by Mr. Getchell constitutes a Grade C violation, pursuant to U.S.S.G. §7B1.1(b).
- 3) Pursuant to U.S.S.G. §7B1.4(a) upon revocation of supervised release, the range of imprisonment applicable to Mr. Getchell is 4-10 months.
- 4) The parties agreed on the appropriate disposition of the case as follows:

The defendant be sentenced to a period of confinement of 10 months to the custody of the Attorney General. No supervised release is to follow.

It is recommended by the undersigned Magistrate Judge that Mr. Getchell be designated by the Attorney General of the United States and the Bureau of Prisons to the Federal Correctional Institution located in Terre Haute, Indiana.

The Court having heard the evidence and/or arguments of Mr. Getchell, his counsel and the government, now finds that Mr. Getchell violated the specified conditions of supervised release as delineated above in the Petition to Revoke his supervised release.

Mr. Getchell's supervised release is therefore **REVOKED** and he is sentenced to the custody of the Attorney General or his designee for a period of 10 months. The service of the sentence is to begin immediately. Upon release from confinement, Mr. Getchell will not be subject to any further term of supervised release.

It is recommended by the Magistrate Judge that Mr. Getchell be designated by the Attorney General of the United States and the Bureau of Prisons to the Federal Correctional Institution in Terre Haute, Indiana.

The Magistrate Judge requests that Mr. Akers, U. S. Parole and Probation Officer, prepare for submission to the Honorable John Daniel Tinder, Judge, as soon as practicable, a supervised release revocation judgment, in accordance with these findings of facts, conclusions of law and recommendation.

Counsel for the parties and Mr. Getchell stipulated in open court waiver of the following:

1. Notice of the filing of the Magistrate Judge's Report and Recommendation;
2. Objection to the Report and Recommendation of the undersigned Magistrate Judge pursuant to Title 28 U.S.C. §636(b)(1)(B); Rule 72(b), *Federal Rules of Civil Procedure*, and S.D.Ind.L.R.72.1(d)(2), *Local Rules of the U.S. District Court for the Southern District of Indiana*.

Counsel for the parties and Mr. Getchell entered the above stipulations and waivers after being notified by the undersigned Magistrate Judge that the District Court may refuse to accept the stipulations and waivers and conduct a revocation hearing pursuant to Title 18 U.S.C. §3561 *et seq.*

and Rule 32.1 of the *Federal Rules of Criminal Procedure* and may reconsider the Magistrate Judge's Report and Recommendation, including making a *de novo* determination of any portion of the Report or specified proposed findings or recommendation upon which he may reconsider.

WHEREFORE, the U. S. Magistrate Judge **RECOMMENDS** the Court adopt the above recommendation revoking Mr. Getchell's supervised release and the sentence imposed of imprisonment of 10 months in the custody of the Attorney General or his designee. Further, that upon Mr. Getchell's release from confinement, he will not be subject to a term of supervised release. The Magistrate Judge also recommends that the defendant be designated to the Federal Correctional Institution in Terre Haute, Indiana.

IT IS SO RECOMMENDED this 29th day of September, 2005.

Kennard P. Foster, Magistrate Judge
United States District Court
Southern District of Indiana

Distribution:

Brad Blackington,
Assistant U. S. Attorney
10 West Market Street, Suite 2100
Indianapolis, IN 46204

William Marsh,
The Indiana Federal Community Defender
111 Monument Circle, #752
Indianapolis, IN 46204

U. S. Parole and Probation

U. S. Marshal